

International Cooperation On Combating Human Trafficking Especially Women And Children: A View from Indonesia*

Romli Atmasasmita**

Saat ini, kejahatan transnasional terorganisir berkembang sangat pesat disebabkan adanya liberalisasi perdagangan, perkembangan teknologi komunikasi yang menakjubkan, dan tekanan dari penegakan hukum yang semakin membaik hampir di seluruh negara. Salah satu kejahatan besar yang perlu mendapat perhatian adalah perdagangan manusia, khususnya wanita dan anak-anak. Untuk menangani jenis kejahatan ini, cara yang paling efektif adalah dengan melakukan kerja sama internasional. Hal inilah yang mendorong dihasilkannya United Nations Convention against Transnational Organized Crime (Konvensi Palermo) beserta ketiga protokolnya yang menyatakan dengan tegas beberapa kejahatan sebagai kejahatan transnasional. Namun tidak dapat dipungkiri, dalam kerja sama internasional yang telah terjalin, terbentur pada beberapa permasalahan disamping ditemukan beberapa kemungkinan yang perlu diujai untuk menangani kejahatan ini. Indonesia sebagai salah satu negara yang telah menandatangani Konvensi Palermo dan protokolnya, tengah mempersiapkan instrumen rancangan ratifikasi. Sejauh ini, di Indonesia terdapat beberapa kasus perdagangan wanita dan anak-anak yang berhasil digagalkan dan diproses hingga ke pengadilan.

Introduction

In the last decade, the nature of organized crime has changed, pushing by the liberalization of the world's trade, facilitated by high-tech communication, and pressured by significant

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** Penulis adalah Kepala Badan Pembinaan Hukum nasional (BPHN). Sebagai guru besar hukum pidana Fakultas Hukum Universitas Padjadjaran (UNPAD), beliau dikenal sangat perhatian terhadap masalah-masalah hukum yang mengatur kejahatan transnasional. Penulis yang dilahirkan di Cianjur tahun 1944 ini menyelesaikan pendidikan hukum S-1 di FH-UNPAD, dilanjutkan dengan "master laws" di University of California, Berkeley dan memperoleh gelar Doktor di bidang Ilmu Hukum dari FH-Universitas Gadjah Mada.

improvement in the law enforcement of most countries. New forms of crimes in our times, which is known as transnational crimes, has spread in many countries, making its detection more difficult, and therefore, international cooperation more essential than ever before. The evidence shows that organized crime has broadened their operations, covers not merely transnational and specialized but transcontinental and diversified.

The Palermo Convention against Transnational Organized Crime is a landmark in the history of crime prevention and criminal justice including its three protocols, which has entered into force.¹ The Convention addresses specific transnational crimes², which are committed by organized groups. Therefore, international cooperation is indispensable in the prevention and combating transnational crimes. The basic tenets of the relationship between the protocols and the Palermo Convention based on the "Parent Convention" principle. The principle stated, a State Party could not ratify the additional protocol without prior ratification to the Palermo convention, and by the same token, a State party could ratify the parent convention without the ratification one of its protocol. The principle suggests each State Party should recognize those relations in its totality.

Human trafficking or trafficking in persons³ is the world's largest crime in the twentieth century, which transcends national

¹ The Convention has entered into force on September 29th, 2003; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children has entered into force on 25 December 2003, and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, has entered into force on 28 January 2004. But, the Protocol against Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Component and Ammunition, has been delayed.

² Four characteristics of transnational crimes, are: (1) it is committed in more than one State; (2) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (3) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; (4) it is committed in one State but has substantial effect in another State.

³ "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or

boundaries; moreover, it becomes transcontinental crimes. Human trafficking has many root causes, which are complex and vary from situation to situation. There are commonly contributing factor to human trafficking includes, economic factors, social and cultural factors, political and legal factors, market factors, and international factors.⁴ Human Trafficking is clearly, a modern form of slavery in the Millennium Ages.

The trafficking in persons Report (TIP Report) released by the United States government in June 2002 estimates the number of persons trafficked in 2001 as between 700.000 to 4 million. Other global estimates of the number of victims trafficked annually range from approximately one to four million. According to the International Organization for Migration, the number of victims trafficked both internally and across national borders in 1997 was four million. The United States government also estimates that about 50.000 women and children are trafficked annually for sexual exploitation into the United States, which is also used as a transit country by the traffickers.

Estimates suggest that nearly one-third of the global trafficking trade, or about 200.000 – 225.000 women and children,

other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery or servitude or the removal of organs (Art.3 of the Protocol of Trafficking in Persons especially Women and Children). "Trafficking in Persons" is clearly different from "Smuggling" under the Protocol of People's Smuggling. The Protocol defines human smuggling as: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

⁴ Ramcharan, Bertrand G., "Human Rights and Human Trafficking", "Trafficking: Networks and Logistics of Transnational Crime and International Terrorism (edited by Dimitri Vlassis, ISPAC, 2004), P.161-162. Economics factors such as poverty, food scarcity, unemployment, and indebt ness; social and cultural factors including domestic violence, gender discriminating in the family and the community and by the State, protracted social conflicts; political and legal factors includes, increasing restrictive and exclusionary immigration policy, scarcity of appropriate legislation and weakness of its enforcement, lack of political will, public sector corruption, governmental hypocrisy over prostitution policies; market factors such as demand caused by the rapidly expanding global sex industry; international factors such as growing feminization of labor migration, increased power and involvement of transnational organized criminal networks.

are trafficked annually from South- East Asia. However, most of this occurs within the region itself, about 60%, to major regional cities while 40% takes place to the rest of the world. Of the 50.000 women and children estimated to be trafficked annually to the United States, approximately 60 % originate from South-East Asia, making this region the most important source region in the world for victims of trafficking to the United States.⁵

The Palermo Protocol of the Convention against Transnational Organized Crimes (2000) has made a clear definition of trafficking so as to differentiate between trafficking and migration, trafficking and smuggling, trafficking and illegal migration, and trafficking and prostitution. The definition of trafficking itself is very broad so as to include human beings as an object, involves an organized criminal group, and has a transnational aspect. The impacts of Trafficking in persons are manifold and touch seriously the basic rights of the peoples who have been trafficked, and yet, only 46 States are parties to it.

The subject matters of Trafficking in Persons were also discussed at the 42nd session of the AALCO in Seoul, Republic of Korea. Fifteen Delegations and two observers has presented their deliberations, and they expressed concerns of the manifold impact on the life and welfare of persons especially women and children. A strategic proposal to establish a forum of Asia-Africa region to explore the possibility of concluding a regional or a sub-regional agreement for combating transnational crimes includes, inter alia, trafficking in persons, is suggested by the Republic of Korea. The purpose of the proposal is to enhance the cooperation of law enforcement agencies in Asia and Africa.

In line with the proposal and within the context of Protocol of Trafficking in Persons, State Parties to the Palermo Convention should seriously consider, first, that human trafficking is a multidimensional issue. It could have migration issue, labor, criminal, and human rights issue. Secondly, human trafficking is

⁵ Farooq Azam, "The Global Challenge of Human Trafficking & Smuggling"; UNAFEL, Resource Material No.62, February 2004; p.5

also has a controversial aspect, significantly, the law enforcement aspect on the one side, and the aspect of Victim's rights, on the other side.

The protocol itself contains a very few aspect of victim's rights compare to the aspect of law enforcement, even they are interwoven and interdependence to each others. There are 5 (five) obligations of the State Party under this Protocol, such as to give information to the victim about relevant court and other proceeding against the offenders and ensure victim's right; to give housing, education and care to child victims in governmental custody; enable victims to seek compensation for damages, including fines, penalties or forfeited proceeds as well as restitution from offenders; to consider victim's request for a resident temporarily or permanently; and to accept and to aid victims without delay, and return them to their country of origin.

The draft text of "Legislative Guide For the Implementation of the UN Convention against Transnational Organized Crime and The Protocol thereto", reiterate the preeminent goals of the protection of witnesses and victims" (Art. 24 – 25). The text laid a clear guidance, which stresses the importance of the protections as follows:

*"For justice to be served, however, special attention must be paid also to victims of crime. They may be at the same time witnesses, but their protection is particularly important given the substantial harm they suffer from transnational organized criminals. News articles, government reports and academic studies are replete with disturbing accounts of the hundreds thousands who fall victim to human traffickers, illegal trades in body parts, and other transnational criminals every years. Men, women and children are subjected to forced labor and other economic, physical and sexual exploitation around the globe."*⁶

⁶ The sentence is quoted from the Draft of "Legislative Guide For the Implementation of the United Convention Against Transnational Organized Crime and The Protocol Thereto"; A joint project of The International Centre for Criminal Law Reform and Criminal Justice Policy and the United Nations Office on Drugs and Crime (UNODC); page 131. Two Protocol to the Convention are particularly relevant the protection of victims. The assistance, protection and repatriation of victims stipulated in article 6, 8 and 9.1 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The draft text of Legislative Guidance stresses that the Convention recognizes the importance of alleviating the impact of transnational organized crimes on vulnerable individuals and groups, and require States to take for measures to protect victims against retaliation or intimidation and to ensure that they introduce procedures for compensation and restitution. The statement in the draft text reflects human rights perspective with its four basic elements of trafficking, includes: the element of exploitation, the element of coercion, the element of engagement by use of various methods, and the element of transportation⁷

On the contrary, the protocol has given much more attention to law enforcement aspect where the protocol using such mandatory language over the provisions which criminalize trafficking in persons. The purpose is very clear, that is, how to strengthen a broad perspectives of law enforcement cooperation in combating human trafficking either in the country of origins, transits, or in the country of destinations.

International Cooperation: Its Problems and Prospects

The enormous scale of trafficking is worldwide which require cooperation effort to solve this problem and brings relief to its victims. These efforts need cooperation at bilateral and multilateral levels among various governments, and also between government and civil society including NGOs. Besides the international instrument as I have mentioned at the outset, there are two other international instrument, which is related to the combating of human trafficking. These are, International Labor Organization Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, and the

⁷ The element of exploitation is a key concept, which refers to conditions of slavery, forced and/or bonded labor, and servitude that violate the fundamental rights of trafficked persons. The element of coercion, be it in the form of threat or use of force, violence, abduction, fraud, deception, coercion, or abuse of authority, or the use of other means which may take place at any point of the trafficking process. The element of engagement including but not limited to sale or purchase, through commercial marriage bureaus, job recruitment agencies; the element of transportation either national or across international borders, which often results in the increased vulnerability of the trafficked persons vis a vis the protection of human rights due to their location (UNAFEI).

Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography, address the sale of and trafficking in children. The ILO Convention 182 requires that countries take steps to protect children from worst forms of child labor, such as prostitution and pornography, and facilitate their access to free basic freedom.

A number of initiatives exist at the regional level of cooperation in seeking common denominators among countries of ASEAN and also within the framework of SAARC. Some of the main regional dialogue process which is related to the prevention and combating human trafficking, includes the following:

1. Bangkok Declaration on Irregular Migration which was adopted by a ministerial conference of 18 countries, held in Bangkok in April 1999;
2. Dakar Declaration which was adopted by the West African Ministerial Meeting on the Participation of Migrants in Development, held in October 2000;
3. North-South Cooperation on Migration and Development (5 + 5 Dialogue, which was started in 1990, involving 5 countries each of the Arab region and Western Europe;
4. Pueblo Process, the Regional Conference on Migration which was held in 1996 in Mexico, involving 11 countries of the Latin American Region;
5. Lima Declaration, a meeting of 11 South American States on Migration, Integration and Development which was held in July 1999;
6. Inter-governmental Consultation on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC);
7. Inter-governmental Asia-Pacific Consultations on Refugees Displaced Persons and Migrants (APC);
8. Bali Process. A ministerial conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, which was held in Bali in February 2002.

The issue of international cooperation in combating human trafficking contains three meanings. First, effective criminal justice

system is not just a matter of national interest, but of international. Secondly, it addresses also sharing views and responsibility, not only political commitment of the State Party. Third, criminal justice system of State Party should provide assistance to the corresponding State parties in bringing the perpetrator to justice. In fact, when it comes to the implementation, some State Parties are reluctant to apply it consistently, and moreover, raises differences of interpretation among State Parties.⁸

The Statement above mentioned likely to recall the 1990th Report of the Council of Europe, which aptly summarizes the contemporary law, and practices of states with respect to universal jurisdiction. The Report stressed the differences of opinion among member states' concerning the purpose of universality, according to which criminal jurisdiction is exercised over offences committed abroad.⁹ Other convention clearly envisage or require the taking of universal jurisdiction such as treaties on counterfeiting, piracy, hijacking, and actions endangering the safety of civil aviation, and also recent international conventions on combating terrorism.

On the contrary, two provisions in the Convention against Transnational Organized Crimes did not recognize universal principle despite the fact that most of the State Party condemns human trafficking, as heinous as modern forms of slavery. Article 4 stated that State Parties shall carry out their obligation in a manner and consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States (Para 1); and nothing in this

⁸ It is interesting to note of what Matti Joutsen said in his paper, that, "as long as crime defined as (and, in most respect, actually was) a local or at most national issue, criminal law remained almost wholly territorial concerned only with acts or omissions that had been committed in the territory of the forum State. This was the approach taken in particular by the Common Law countries; offences abroad were not their concern, and their authorities would not tend to be willing to assist the authorities of another State in bringing the offender to justice; this attitude is not limited to criminal law, but could also be seen in civil cases.

⁹ In the ancient times, the tendency was for State to take unilateral action to make arrests and bring the offender to justice, and such ... unilateral actions, colorful as they may be, were an unsatisfactory response to growing problem. Unilateral action could create unnecessary tensions between nations (Macedo, 2004, p.44-45).

Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction. That are reserved exclusively for the authorities of that State by its domestic law (Para 2). Article 4, clearly is the primary vehicle for the protection of national sovereignty.

Moreover, there are other provisions that protect national prerogative and sovereignty. Article 11 Para 6 stated that nothing in the Convention affects the principle that domestic law of State Party governs, the description of s the offences established in accordance with the Convention, applicable defenses, legal principle controlling the lawfulness of conduct, and the prosecution and punishment.

Therefore, the main issue is an effective and efficient law enforcement cooperation between State Parties, particularly, cross-border issue of cooperation. In seeking it, State Party should seriously consider and taking into account four factors: differences of legal system; principles and procedure of extradition and certain types and culture, which exists in most Asia and Africa's countries.

The fact that there are differences of legal systems (Common Law System, Civil Law System, Islamic Law System)¹⁰ in the world since along time ago, should not be deemed as an obstacle so as to hamper the future of international cooperation among State Parties. The difference is becoming crucial since it deems as an obstacle in the practice of extradition. Some member State Parties are not willing enter into a treaty unless their national interest has to do so. Furthermore, in extradition cases sometimes creates tensions among the respected governments because of different procedures of the law of extradition. For example, it has shown, that in common law such as Australia, recognize it as a judicial process, which should follow in line with their criminal justice system. Final decision to extradite is upon the Court's decision. On the contrary, in most of the Civil Law System, such as Indonesia, recognize the extradition procedure as an administrative process,

¹⁰ Details information about these differences either in the history, the principles, substance or the structure see David and Brierly (1985).

which is relying upon the President's decision. Moreover, the different policy of criminal justice system often creates injustice, particularly for those people who seeking access to justice because in most of developing nations, victims and the society at large are still, vulnerable in obtaining effective and efficient legal system.

The differences as mentioned above, subsequently affects the legal policy under their own legal systems particularly in the protection of the victims as to compare with the principle of due process of law. In the Common Law System, due process of law is indispensable and far more reaching influence than that of the other legal systems. Having said that, the Common Law System strongly upholds the procedure (efficiency) in reaching the outcome of the justice system than the outcome per se (effectiveness). Therefore, the system could not ultimately guarantee the protection of the rights of the victims. The UN Declaration of Principles of the Protection of the Victim's of Crime and Abuse of Power (1985)¹¹ has clearly obliged to all Member State to respect and uphold the right of the victim, beside the offenders. The two protocol of the Palermo Convention, namely, protocol of human trafficking, and protocol of smuggling migrants, has acknowledge the shifting paradigm from the offenders oriented to the victim's rights, even yet, very few mandatory language has been used in the said protocol. Subsequently, it would affect the language of law and regulation, which is related to human trafficking. Besides, most of law enforcement officials including judges, due to Due process principle, have not perceived the need to protect the victim as much as the offenders. Having said that, I reiterate the implementation of the protocol of Human Trafficking which urgently requires a transitional period to condense deeply and comprehensively the new paradigm among law enforcement officials. Therefore, the need of a transitional value among them is of preminent. The

¹¹ Victimization is recognized and put forward as one of essential components that incorporates in the comprehensive strategies of the crime prevention as stated in the Vienna Declaration on Crime and Justice. The theory of criminal justice system recognized two model of approach, one is, the crime control model, and the other, the due process model, which is fundamentally, has a different principle and perspectives (Herbert Packer, 1968). The first model mostly applies in the Civil Law Countries, and the second models apply in most of the Common Law countries.

absence of these values will hamper the understanding of victims' right among law enforcement officials so as to undermine the role of the victims within the criminal justice system.

Another issue of international cooperation in the prevention and combating human trafficking is cultural and traditional practices of the Asian African regions. At the 42nd session of the AALCO in Seoul, Republic of Korea, the Ghana Delegation stated that culture practices of the Asian African regions had made them easy targets for those engaged in the criminal activity of trafficking women and children across the world. Similar to that statement, the delegation of Thailand has suggested the mechanism of regional as well as international cooperation, which should be inter alia gender sensitive. The issue is consistent with Asian African culture, which is historically and sociologically has fundamental differences with that of Western culture. The fact that most victims of human trafficking are women and children shown the relevancy of the statement Ghana and Thailand delegations.

Facing the practice of international cooperation in the prevention and combating transnational crimes includes trafficking in persons, I recall the Vienna Declaration on Crime and Justice: "Meeting the Challenge of the Twenty Century", which emphasize the responsibility, ethical and effective criminal justice system. In relation to the declaration, I reiterate a new paradigm in the framework of the criminal justice system, which upholds equally, both the offenders' rights of due process and a broad victim's protections. The new paradigm, which I call, "*the balanced principle of justice*", hopefully, will pave the way to establish a comprehensive criminal justice strategy in combating transnational crimes, particularly, human trafficking.

A comprehensive strategy of criminal justice system in combating transnational crimes is indispensable need cooperation between State parties. The need to rearrange new cooperation should be taken on three different levels: the political level, the

structural level and the practical level.¹² The rearrangement includes evaluating the scope of extradition, its procedure and principles; finding an effective, clear and straightforward method of operation in combating transnational crimes includes human trafficking.

In line with the rearrangement, I recall the efforts that have been, recently, undertaken by the Council of the European Union in combating trans-border crimes. The Council of the EU has enacted the European Arrest Warrant Agreement on 7 July 2002, which followed-up the Council Framework Decision of 13 June 2002 on Joint Investigation teams. The EU Arrest Warrant (EUAW, 2002) was enacted on the fact that extradition involves often-complicated context of political and diplomatic relations between States. It is, indeed, in fact, slow and it is not suited to frontier-free area such as the European Union, despite the fact that EU has 6 (six) treaties of extradition, supported by Schengen Information System (SIS). But, most of its implementation is ended unsuccessfully. While at the same time, transnational crimes by organized groups is increasingly unhindered every years, and subsequently, brings about much more victims as well as undermines public order and security of the nations. The EU AW radically has abolished the formal procedures of extraditions among Member States, and consideration should be given to *fast-track extradition procedure*, without prejudice to the principle of fair trial.¹³ The mandate, which was called,

¹² On the political level, governments must create the legal and political possibilities for international police cooperation. This is the level, which deals with the constitution and legislation of the individual countries, and with international agreements. It is the political level that determines the legal issues relating to police operational powers across borders. Countries that had many cases in common gradually began to enter into more formalized agreements for cooperation, including bilateral treaties. In its ambitious form, the political level seeks to unify and harmonize the way in which criminal justice and law enforcement is carried out in two or more countries. The structural level deals with operational structures, practices and procedure. It is the structural level that provides the tools include information system, common data bases, method of coordination, access of information, and where necessary the establishment of specialist organizations dealing with transnational crimes. On the practical level, concerned with the investigation of specific offences.

¹³ There are eight points, which reflects the protection of human rights and fair trial. These are, (1) the provisions for the presence of legal counsel, and if necessary, an interpreter as from the time of the arrest under the European Arrest Warrant (art. 11); (2)

"Recommendation 28", is the recent strategy of the EU for the next millennium, and it regards with the prevention and control of organized crimes, and calls on the Commission to make proposal of expedited extradition on fast track extradition procedure, and long terms possibility of the creation of a single European legal area of extradition including in relation with the procedure in absentia.¹⁴

The EU mechanism in pursuing effective and efficient law enforcement procedure seems fit to most of the Asian African Member States' situations, particularly in cross-borders area. And it might consider by all Member States of Asian African as one way to achieve the goals of the Convention Against Transnational Organized Crimes, particularly the Protocol of the Prevention, Suppressing, and Punishing Trafficking in Persons, especially Women and Children.

Indonesia's Effort in the Prevention and Combating Human Trafficking

provision for the judicial authority to issue the suspension of the execution of arrest warrant when the person arrested voluntarily undertakes to appear (Art.13.3); (3) provision for the retrial of the person against whom a judgment has been given in absentia after his lodging an opposition with the executing judicial authority (Art.35); (4) the provisional detention should be limited since the effectiveness of the arrest warrant assure that a person will actually be surrendered to and appear before the issuing judicial authority (Art.17); (5) transfer that are neither useful nor necessary will be avoided by the use of videoconferencing (Art. 34), and similarly the execution of a penalty in the place where the condemned person can best be reintegrated should be encouraged (Art.33 and 36); (6) the procedure of arrest warrant should be undertaken within the reasonable time (ninety days limit) and the criminal proceeding will be accelerated; (7) the removal of the principle of double criminality is not the expense of States with the most lenient legislation. The negative list mechanism allows Member States which choose to decriminalize certain acts to exclude them from the scope of the European Arrest Warrant (Art. 27); and (8) the possibility of a State of making the execution of European arrest warrant conditional on a guarantee that life imprisonment will not be imposed is stated (Art.37).

¹⁴ The AW EU has dual objectives. First, in terms of effectiveness of law enforcement, it draws the conclusions of opening the borders within the European law enforcement area by making it easier for justice to be administered across borders between Member States. Moreover, the system addresses the European citizens concerns for the protection of individual rights.

Efforts of combating transnational organized crime within the Indonesian boundaries has been undertaken which is based in two levels of procedures. First, through legislation process, and secondly, the law enforcement process.

At the legislation process, the government of Indonesia has signed The Convention against Transnational Organized in Palermo, on December 2000, and its two protocols, The Protocol to Prevent, Suppress, and to Punish Trafficking in Persons, Especially Women and Children, and The Protocol against the Smuggling of Migrants by Land, Sea and Air. As yet, the draft law for the ratification of the Convention against Transnational Organized Crime and the Protocol of Human Trafficking has been concluded, and is now pending to the submission to the Parliament due to the unfinished deliberation of many draft law during the year 2003 - 2004. By the same token, the government of Indonesia has concluded the draft law on the Combating against Human Trafficking. Besides these efforts, the government of Indonesia has promulgated law number 23, 2002 concerning the "Protection of the Child", and enacted the Presidential Decree Number 88 year 2002 concerning the establishment of the National Plan of Action on the Elimination of Trafficking in Women and Children, and the Task Force consists of various institutions.

There are 30 (thirty) laws and regulations has been enacted related to human trafficking. These regulations have been supported by extradition treaty and Mutual Legal Assistance and Criminal Matters with Philippines Thailand, Malaysia, Hong Kong, Republic of Korea and Australia. These laws and regulations are as follows:

- Law Number 7/1984 concerning the elimination of all forms of discrimination against women.
- Law Number 1/2000 regarding The Worst forms of Children Labor
- Law Number 23/2003 regarding child protection
- Law Number 9/1990 regarding Tourism
- Law Number 3/1990 regarding Children Court

- President Decree Number 36/1999 regarding Convention on The Rights of the Child.
- President Decree Number 88/1999 regarding The National Plan of Action on Combating trafficking Woman and Children.
- TAP MPR No. X/200: recommendation for President of The Republic of Indonesia to combat trafficking Woman and Children with enacted Indonesian regulations, to ratify of international convention and conducting The National Plan of Action.

Based on the report of the National Police and on several studies, Indonesia is designated as the country of origin for human trafficking. Besides, there is a growing phenomenon of in country trafficking from one province to the other province as shown below:

Table 1: Source, transit and receiving regions of trafficking in persons in Indonesia

Source Provinces	Transit	Receiving Provinces
North Sumatera Prov	Medan	Deli Serdang, Medan
Lampung Prov.	South Lampung	South Lampung
West Java Prov.	Bandung	-
Central Java Prov.	Cilacap, Solo	Baturaden
East Java Prov.	Surabaya	Surabaya
Bali Prov.	Denpasar	Denpasar, Gianyar, Legian, Nusa Dua, Sanur, Tuban
West Kalimantan Prov.	Entikong, Pontianak	Pontianak
West Nusa Tenggara Prov.	Mataram	Senggigi Beach, Sumbawa
North Sulawesi Prov.	Bitung	-
South-East Sulawesi Prov.	-	-
-	Riau Prov. Batam	Riau Prov.: Batam, Tanjung Balai Karimun

Source Provinces	Transit	Receiving Provinces
-	DKI Jakarta Prov. (all Provinces)	DKI Jakarta Prov. (All Provinces)
-	East Kalimantan Prov.: Balikpapan, Nunukan, Tarakan	East Kalimantan Prov.: Balikpapan, Samarinda.
-	South Sulawesi Prov.: Makassar	-
-	-	Papua Prov.: Biak, Fak-fak, Timika

Source: Rosenberg, 2003

Table 2: Source and Transit Provinces and Receiving Countries

Source Provinces	Transit	Receiving Countries
North Sumatera Prov.	Medan	South East Asia (Singapore, Malaysia, Brunei, Filipina), Middle East (Arab Saudi), Taiwan, Hong Kong, Japan, South Korea, Australia. South of South America
Lampung Prov.	-	
Riau Prov.	Batam	
Jakarta Prov.	Jakarta	
West Java Prov.	-	
Central Java Prov.	Solo	
East Java Prov.	Surabaya	
West Kalimantan Prov.	Pontianak, Entikong	
North Sulawesi Prov.	Nunukan	
Bali Prov.	-	
West Nusa Tenggara Prov.	-	
West Nusa Tenggara Prov.	-	

Source: Rosenberg, 2003

The report of the National Police stated that during 1999 until 2003, reveals significant number of peoples' trafficking in Indonesia as shown below:

Table 3: Trafficking in Person Cases in Indonesia during 1999-2003

No	Year	Total Cases	Delegated to the Attorney Office	Percentage
1	1999	173	134	77.46
2	2000	24	16	66.67
3	2001	179	129	72.07
4	2002	155	90	58.06
5	2003	125	67	53.60

Source: Criminal Investigation Agency of the National Police Headquarter of the Republic of Indonesia (2004).

In 2003, Regional Police of North Sumatra reported that 81 cases of trafficking and 44 of them has render to the public prosecutor. The police also reported that they had revealed the trading network of babies in February 2003, and they had arrested three suspected who committed trading of babies from Indonesia to Singapore. The operation manipulates the procedure of adoption illegally. Baby collectors are Indonesian, and the locus delicti in Indonesia, and the syndicate operates by Singaporean citizens. Its price is around 35 million rupiahs.

Among the cases submitted by the police to the prosecutor's office and then filed to the court, and many of them had been adjudicated by the judges. Based on the data collected from various sources, 36 cases (involving 84 suspects) were on trial with 11 of them (involving 27 suspects) having received the court rulings. The length of the punishment varied; from 5-6 months, 1 year or more, 2 years or more, to 4 years as the longest sentence inflicted.

- (1) Mass Setyawan alias Iwan bin Yasin, Asnita bin Yasin and Man Lago, each was sentenced to 4 years of imprisonment by the Lampung court because they had been proved guilty of selling Sr binti Haj (17 years) by inveigling her with false promises of marriage and employment when later, she was instead sold as a sex worker with her tariff being IDR 100,000 (criminal Investigation Division of the National Police Headquarter, 2003).

- (2) Benny and Ita, each was sentenced to 4 years and 2.5 years of imprisonment respectively by the Medan Court, because they had been convicted of abduction (special Assistance Unit, Medan Big city Police, 2003).
- (3) The Medan Court also sentenced Rusni alias Ahun, Hasmi Purba, Rubeim and Rasiman to 1.5-2 years of imprisonment. They had been convicted of selling babies (Special Assistance Unit, Medan Big City Police, 2003).
- (4) The local court also sentenced Popo Purba alias Ade alias Sahud M. Purba and Andi Bonar Sirait to 18 months and 10 months of imprisonment respectively, for trafficking a girl; while Jusuf Rata alias Son was punished for 1 year in prison for selling 2 women (PKPA NGO, Medan, 2003).
- (5) The Sanggau Court, West Kalimantan, convicted and sentenced Yus, Pin and An to 2 years, 13 months and 13 months of imprisonment for colluding in selling 2 girls and 15 and 16 years in age (LBH APIK, Pontianak, 2003).
- (6) Mama Siska and Ongen were sentenced to 5 and 6 months in prison respectively by the court of Manado, North Sulawesi. They were found guilty for illegally confining and sending 23 women to Papua (North Sulawesi Women's Empowerment bureau, 2003).
- (7) The Court of Bandung, West Java, inflicted six-month imprisonment against A and N who was found guilty for colluding in trafficking in women and profiting from obscene acts against a 15-year old girl (Metro, 2003).
- (8) The Cianjur Court sentenced Dadun and his wife to 1 year and 4 months of imprisonment for selling 2 underage children.
- (9) The same court also punished Agus Budiman, Asep bin Barjudin and Tati alias Sumiati alias Atik by 2 years, 1 year and 1 year in prison respectively for being found guilty of trafficking 7 women (Solidaritas Perempuan, 2003).
- (10) The Lahat Palembang Court sentenced Sutikno to 6 months in prison for being found guilty of facilitating obscene act

against 10 girls as well as taking advantage from the obscene acts against the girls (Kompas, 2003).

- (11) The West Jakarta District Court found Asmani binti Asrip (a young widow of 32 years old) guilty and sentenced her to 2 years on prison on Tuesday, December 23, 2003 for selling her daughter's and niece's virginities (they were second-year junior high school students) to a philanderer in West Jakarta in January 2003. The same punishment was inflicted against Dini Suparmawati binti Suparman (a Dangdut singer, 22 years old), who in this case had acted as a mediator (Kompas Cyber Media, December 2nd, 2003).

Cases that are still on trial, with the Law No. 23 year 2002 concerning Child Protection have taken affect, many of the persons involved are charged with penalties of 3-1 years of imprisonment.

Two suspected Indonesian Nationals and three suspected Malaysian nationals in Tanjung Pinang were charged with 6-10 years imprisonment penalties in a case of trafficking in persons. Two other Indonesian nationals were charged with 3-15 years imprisonment penalties for trafficking in babies (Resort Police of Tanjung Pinang, 2003). Media Indonesia (September, 25, 2003) reported that there were 2 suspects charged with 3 to 15 years imprisonment penalties for trafficking in babies, while Kompas, (March 8, 2004) reported 2 other suspects charged with 3 to 15 years imprisonment penalties for selling 2 women and an underage girl. Meanwhile, Kompas (September 2003) reported that 5 Indonesian Nationals and 2 Malaysian Nationals in Riau were charged with 4 to 15 year imprisonment penalties for selling babies.

In Medan, 4 suspects were charged with 3 to 15 year imprisonment penalties for selling underage girls (Suara Pembaharuan, February 27, 2004); 2 other people were also charged with similar penalties for selling 4 women and an underage girl (Kompas October 14, 2004). One more person was charged with a four-year imprisonment penalty for selling an underage girl (NGO Pusaka Indonesia, 2003).

Based on the description and analyses above, to conclude, I recommend further actions as follows:

1. Countries of Asia and Africa should undertake an effort to harmonize different national laws on combating human trafficking;
2. Countries of Asia and Africa should undertake an effort to establish regional/or sub-regional levels of legal cooperation on combating human trafficking;
3. Countries of Asia and Africa should revise the procedure of extradition and mutual legal assistance in criminal matters; and
4. Countries of Asia and Africa should consider the possibility of establishing working groups in conducting point 1–3 above mentioned.

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